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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/335,189	06/17/1999	HIROYUKI YUYAMA	120/P-4864	6183

7590 03/25/2003

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EXAMINER

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ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 03/25/2003

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 18

Application Number: 09/335,189
Filing Date: June 17, 1999
Appellant(s): YUYAMA ET AL.

MAILED

MAR 25 2003

GROUP 3600

Thomas D. Robbins
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 5, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

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(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 1-12 have been canceled in the amendment filed 3/7/01 and claims 13-31 are pending in the application. Each of claims 13-31 is rejected.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7). In particular, claims 13-25 stand or fall together and claim 26-31 stand or fall together.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(9) Prior Art of Record

4,847,764	Halvorson	7-1989
5,537,626	Kraslavsky et al.	7-1996

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,847,764 to Halvorson in view of U.S. Patent No. 5,537,626 to Kraslavsky et al.

As per claim 13, Halvorson teaches a drug preparation order system comprising: a control unit operable to carry out logic operations and to output control signals based on drug preparation data, said control unit comprising:

--the claimed data storage portion and a printer setting portion, said data storage portion being operable to store a first set of data corresponding to the drug preparation data is met by the computer (10, Fig. 1) including data storage which stores long and short term data with regards to the patient's medication and the one or more printers with printer setting in strategic location to provide reports of patient's medication (see: column 2, lines 67 to column 3, lines 12 and 23-27);

--the claimed monitor connected to said control unit, said monitor being operable to display a second set of data corresponding to the drug preparation data is met by the monitor (30, Fig. 1) at the dispenser (32, Fig. 1), which displays inputted patient drug information (see: column 3, lines 28-34 and Fig. 1).

--the claimed input device operable to enable a user to enter the drug preparation data and a third set of data is met by the keyboard (20, Fig. 1) which allows the user to input drug information (see: column 3, lines 5-12);

--the claimed plurality of printer connected to said control unit, said plurality of printers being operable to print on drug preparation order sheets in response to the control signals is met by the one or more printer (21, Fig. 1) connected to the dispenser (32, Fig. 1) connected to the central computer (10, Fig. 1) that print hardcopy medical patient information and reports (see: column 3, lines 23-27 and lines 31-34);

--the claimed printer setting portion is operable to store the third set of data met by the printer (21, Fig. 1) that prints the patient medical data and reports and the computer (10, Fig. 1) which stores data inputted by the user (see: column 2, lines 67 to column 3, lines 12 and column 3, lines 23-27);

--the claimed monitor is operable to display a fourth set of data corresponding to the structure correlation between the drug preparation data and said plurality of printer is met by the monitor (30, Fig. 1) and the printers (21, Fig. 1) at dispenser (32, Fig. 1) which displays the patient's inputted drug information (see: column 3, lines 28-34 and Fig. 1);

--the claimed input device and said control unit are operable to enable the user to modify the third set of data, by way of modifying the fourth set of data is met by the user's ability to

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perform information inquiry and make modification with the keyboard (20, Fig. 1) about previously stored or current patient drug information (see: column 3, lines 15-27). Halvorson fails to teach:

--the claimed correlation between the drug preparation data and the plurality or printer, wherein the correlation may be modified.

Kraslavsky et al. teaches the use of a printing software called Novell NetWare® that allows the user to control (modify) the printer's function which are sent to the print server (Fig. 1) (see: column 12, lines 6-13).

Although Kraslavsky et al. does not use the print software in the medical field it would have been an obvious modification to incorporate this software in the medical system taught by Halvorson for a person having ordinary skill in the art at the time of the invention with the motivation of enabling remote printers to be effective and intelligent members of a network (see:

Kraslavsky et al. column 1, lines 5-16), thereby enabling printed patient's prescription information to be given out in a timely and more efficient manner.

As per claim 14, Halvorson teaches the claimed drug preparation data includes data corresponding to a patient name, a patient code, a drug code, taking directions, and dosage is met by the system database, which includes information about the patient's name and code as well as drug code, taking directions and dosage of all medication (see: column 9, lines 42-45, 54-55, column 10, lines 54).

As per claim 15, Halvorson teaches the claimed first type of communicator connected to said control unit, said first type of communicator being operable to transmit drug preparation

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order data provided by said control unit is met by dispenser (32, Fig. 1) which receives patient drug data from the central computer (10, Fig. 1) (see: column 3, lines 47-51).

--the claimed plurality of trays, each having a second type or communicator, said plurality of trays and said control unit are combined as a system are met by the plurality of dispenser (32, Fig. 2) including communication interface in the form of computer monitor, keyboard, and printer as seen in Figure 2;

--the claimed second type of communicators is operable to communicate with said first type of communicator is met by plurality of dispenser (32, Fig. 1) which communicates the central computer (10, Fig. 1) (see: column 3, lines 27-33);

--the claimed trays has a display portion is met by the dispenser (32, Fig. 1) which has a monitor and trays which hold the drugs (see: Fig. 2); and

--the claimed display portions are operable to display the drug preparation order data sent from said control unit by said first type of communicator is met by the monitor (30, Fig. 1) at dispenser (32, Fig. 1) which displays the patient's inputted drug information (see: column 3, lines 28-34 and Fig. 1).

As per claim 16, Halvorson teaches the claimed printers are operable to transmit identification information to said trays, when drug preparation order data is transmitted by said first type of communicator is met by the inputting of drug information by the keyboard (20, Fig. 1) which is dispensed by the dispenser (32, Fig. 1) and outputted by the printer (21, Fig. 1) (see: column 51-53).

As per claim 17, Halvorson teaches the claimed control unit is operable to transmit identification information to said trays, when drug preparation order data is transmitted by said

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first type of communicator is met by the inputting of drug information by the keyboard (20, Fig. 1) which communicates with the central computer (10, Fig. 1) that receives the inputted drug data (see: column 3, lines 27-33).

As per claim 18, Halvorson teaches the claimed control unit is operable to transmit information on whether guidance is necessary, when drug preparation order data is transmitted by said first type of communicator is met by the inputting of drug information by the keyboard (20, Fig. 1) which then is evaluated by the computer (10, Fig. 1) to made a scheduling prescription (see: column 4, lines 56-63).

As per claim 19, Halvorson teaches the claimed control unit is operable to transmit identification information to said trays, when drug preparation order data is transmitted by said first type of communicator is met by the inputting of drug information by the keyboard (20, Fig. 1) which communicates the central computer (10, Fig. 1) the received inputted drug data (see: column 3, lines 27-33).

As per claim 20, Halvorson teaches the claimed control unit is operable to transmit information on whether guidance is necessary, when drug preparation order data is transmitted by said first type of communicator is met by the inputting of drug information by the keyboard (20, Fig. 1) which then is evaluated by the computer (10, Fig. 1) to made a scheduling prescription (see: column 4, lines 56-63).

As per claim 21, Halvorson teaches the claimed control unit is operable to transmit information on whether guidance is necessary, when drug preparation order data is transmitted by said first type of communicator is met by the inputting of drug information by the keyboard

(20, Fig. 1) which then is evaluated by the computer (10, Fig. 1) to made a scheduling prescription (see: column 4, lines 56-63).

As per claim 22, Halvorson teaches the claimed order to put drugs in a plurality of trays according to the drug types and the number of days for which the drugs are to be prescribed, the drugs can be assigned to said plurality of trays is met (see: column 3, lines 47-63).

As per claim 23, Halvorson teaches the claimed printers are operable to print on a drug preparation order sheet, information indicating whether drugs have been put into plurality of trays is met (see: column 3, lines 51-53).

As per claim 24, Halvorson teaches the claimed control unit is operable to transmit identification to said trays, when drug preparation order data is transmitted by said first type of communicator is met by the inputting of drug information by the keyboard (20, Fig. 1) which then is evaluated by the computer (10, Fig. 1) to made a scheduling prescription (see: column 4, lines 56-63).

As per claim 25, Halvorson teaches the claimed control unit is operable to transmit information on whether guidance is necessary, when drug preparation order data is transmitted by said first type of communicator is met by the inputting of drug information by the keyboard (20, Fig. 1) which then is evaluated by the computer (10, Fig. 1) to made a scheduling prescription (see: column 4, lines 56-63).

As per claim 26, Halvorson teaches a drug preparation order system for use with a drug preparation order sheet, said system comprising:

--the claimed control unit for carrying out logic operations and outputting control signals, said control unit including a memory is met (10, Fig. 1);

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--the claimed display connected to said control unit (32, Fig. 1); and

--the claimed plurality of printers connected to said control unit is met by all the printer (21, Fig. 1) connected to the computer (10, Fig. 1);

--the claimed said memory storing a table which includes a plurality of drug type codes is met by the system database which includes information about the patient's name and code as well as drug code, taking directions and dosage of all medication (see: column 9, lines 42-45, 5455 and column 10, line 54),

said control unit further including:

--the claimed input device operable to input external data into said memory, the external data comprising a plurality of sets of data, each set comprising drug data is met by the user's ability to perform information inquiry and make modification with the keyboard (20, Fig. 1) about previously stored or current patient drug information (see: column 3, lines 15-27);

--the claimed means for associating each of the plurality of sets of data with one of the drug type codes is met by the system database which includes information about the patient's name and code as well as drug code, taking directions and dosage of all medication (see: column 9, lines 42-45, 54-55 and column 10, line 54); and

--the claimed means for displaying the table on said display (32, Fig. 1).

Halvorson fails to teach:

--the claimed plurality of printer codes, each of the drug type codes corresponding to one of the printer codes;

--the claimed means for associating each of said plurality of printers with one of the printer codes;

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--the claimed means for changing the drug type codes and/or printer codes through said input device while the table is displayed on said display; and

--the claimed means for activating one of said printers that corresponds to the drug type code associated with one of the plurality of sets of data to print the one of the plurality of sets of data on a drug preparation order sheet upon entry of a command to print the one of the plurality of sets of data.

Kraslavsky et al. teaches the using a computer with printing software called Novell NetWare® that allows the user to control (modify) the printer's functions that include creating a new print server and print queues, configuring printing ports and starting or stopping printer (see: column 12, lines 6-13).

Although Kraslavsky et al. does not use the print software in the medical field it would have been an obvious modification to incorporate this software in the medical system taught by Halvorson for a person having ordinary skill in the art at the time of the invention with the motivation of enabling remote printers to be effective and intelligent members of a network (see: Kraslavsky et al. column 1, lines 5-16), thereby enabling printed patient's prescription information to be given out in a timely and more efficient manner.

As per claim 27, Halvorson teaches the claimed first type of communicator connected to said control unit, said first type of communicator being operable to transmit drug preparation order data provided by said control unit is met by dispenser (32, Fig. 1) which receives patient drug data from the central computer (10, Fig. 1) (see: column 3, lines 47-51),

--the claimed plurality of trays, each having a second type of communicator, said plurality of trays and said control unit being combined as a system are met by the plurality of

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dispenser (32, Fig. 2) including communication interface in the form of computer monitor, keyboard, and printer as seen in Figure 2,

--the claimed said second type of communicators is operable to communicate with said first type of communicator is met by plurality of dispenser (32, Fig. 1) that communicates the central computer (10, Fig. 1) (see: column 3, lines 27-33),

--the claimed said trays has a display portion is met by the dispenser (32, Fig. 1) which has a monitor and trays which hold the drugs (see: Fig. 2), and

--the claimed display portions are operable to display the drug data is met by the monitor (30, Fig. 1) at dispenser (32, Fig. 1) that displays the patient's inputted drug information (see: column 3, lines 28-34 and Fig. 1).

As per claim 28, Halvorson teaches the claimed printers are operable to print on a drug preparation order sheet, information indicating whether drugs have been put into one of said plurality of trays is met (see: column 3, lines 51-53),

--the claimed control unit is operable to transmit identification information to said trays when drug data is transmitted by said first type of communicator is met by the inputting of drug information by the keyboard (20, Fig. 1) which communicates the central computer (10, Fig. 1) the received inputted drug data (see: column 3, lines 27-33), and

--the claimed control unit is operable to transmit information on whether guidance is necessary when drug data is transmitted by said first type of communicator is met by the inputting of drug information by the keyboard (20, Fig. 1) which then is evaluated by the computer (10, Fig. 1) to made a scheduling prescription (see: column 4, lines 56-63).

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As per claim 29, Halvorson teaches the claimed control unit is operable to transmit identification information to said trays when drug data is transmitted by said first type of communicator is met by the inputting of drug information by the keyboard (20, Fig. 1) which then is evaluated by the computer (10, Fig. 1) to made a scheduling prescription (see: column 4, lines 56-63), and

--the claimed control unit is operable to transmit information on whether guidance is necessary when drug data is transmitted by said first type of communicator is met by the inputting of drug information by the keyboard (20, Fig. 1) which then is evaluated by the computer (10, Fig. 1) to made a scheduling prescription (see: column 4, lines 56-63).

As per claim 30, Halvorson teaches the claimed control unit is operable to transmit information on whether guidance is necessary when drug data is transmitted by said first type of communicator is met by the inputting of drug information by the keyboard (20, Fig. 1) which then is evaluated by the computer (10, Fig. 1) to made a scheduling prescription (see: column 4, lines 56-63).

As per claim 31, Halvorson teaches the claimed putting drugs into said plurality of trays according to drug types and a number of days for which the drugs are to be prescribed, the drugs can be assigned to said plurality of trays is met (see: column 3, lines 47-63),

--the claimed printers are operable to print on a drug preparation order sheet, information indicating whether drugs have been put into a plurality of trays is met (see: column 3, lines 51-53),

--the claimed control unit is operable to transmit identification information to said trays, when drug data is transmitted by said first type of communicator is met by the inputting of drug

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information by the keyboard (20, Fig. 1) which communicates the central computer (10, Fig. 1) the received inputted drug data (see: column 3, lines 27-33), and

--the claimed control unit is operable to transmit information on whether guidance is necessary, when drug data is transmitted by said first type of communicator is met by the inputting of drug information by the keyboard (20, Fig. 1) which then is evaluated by the computer (10, Fig. 1) to make a scheduling prescription (see: column 4, lines 56-63).

(11) *Response to Argument*

In the Appeal Brief filed 5 February 2003, Appellant makes the following arguments:

(A) Neither Halvorson nor Kraslavsky teach the required features in claims 13 and 26.

(B) The Examiner fails to provide sufficient sound scientific reasoning to combine the prior art to arrive at the invention thus the proposed combination is not a "proper combination".

Examiner will address Appellant's arguments in sequence as they appear in the brief.

Response to Argument (A):

In response to the first argument, the Examiner respectfully submits that each and every limitation in claims 13 and 26 have been shown to be taught or suggested by Halvorson and Kraslavsky as described above. In particular, Halvorson teaches a monitor (30, Fig. 1) and printers (21, Fig. 1) at a dispenser (32, Fig. 1) which displays the patient's inputted drug information (see: column 3, lines 28-34 and Fig. 1). Halvorson further teaches a system database which includes information about the patient's name and code including drug code, taking direction and dosage of all medication (see: column 9, lines 42-45, 54-55 and column 10, line 54). Halvorson merely fails to teach the correlation between the drug preparation data the plurality or printer, wherein the correlation may be modified and a plurality of drug-type codes

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and a plurality of printer codes, where each drug-type code correspond to one of the printer codes. However, Kraslavsky et al. teaches the use of printing software called Novell NetWare® that allows the user to control (modify) the printer's function which are sent to the print server (Fig. 1) and include creating a new print server and print queues, configuring printing ports and starting or stopping printer (see: column 12, lines 6-13). In addition, with respect to Appellant's argument that the combination proposed by the Examiner runs contrary to the intentions of Halvorson and that Halvorson teaches away from a combination with Kraslavsky, the Examiner respectfully disagrees. In particular, Appellant's remarks appear to be based on the premise that Halvorson's system requires a dispensing station to which authorized access to permitted as, for example, by a nurse physically manning the station. Appellant then concludes that "modifying the Halvorson system... would increase the probability of unauthorized access to a medication dispensing station", as indicated in the sentence bridging pages 10-11 of the Appeal Brief (Paper Number 17). This position is incorrect for at least the following two reasons. Firstly, the combination purported by the Examiner does not alter the security and authorization levels intended by Halvorson, as the Examiner never relied upon any modifications to the structure of the medication dispensing station disclosed by Halvorson. Halvorson's Fig. 1 clearly depicts a plurality of printers (21) connected to dispensing stations (with or without a dispenser) (32) via a computer (10). The only modification proposed by the Examiner was that of incorporating Novell NetWare® software disclosed by Kraslavsky (col. 12, lines 6-13) with the intention of better managing the multiple printers of Halvorson by making them truly intelligent responsive members of the network capable of re-routing print requests when one printer is "off-line" and/or "out-of-paper" (Kraslavsky; col. 1, lines 45-55). As such, it is not seen that the combination of

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Halvorson and Kraslavsky compromise any security features and authorization levels described by Halvorson. In light of the above, Appellant's reliance on the *In re Grasselli* decision is moot. Secondly, Appellant's remarks fails to consider that Halvorson's dispensing station may or may not have a dispenser (see Fig. 1 of Halvorson), and further, that a dispenser has locks on its access doors (40) (col. 3, lines 57-60 and fig. 2 of Halvorson). As such, Appellant's remarks that medication may be accessed by an unauthorized person while a nurse is traveling from one dispensing station to another is respectfully submitted to be illogical, as a nurse would typically lock the dispenser prior to leaving the station. In addition, Appellant's remarks apparently assume that a nurse is continually manning a dispensing station connected to a dispenser; however, Halvorson clearly discloses that a dispensing station may not have a dispenser (see Fig. 1). As such, it is respectfully submitted that the nurses typically would travel between dispensing stations within the Halvorson system to access dispensers, and as noted above, would typically be in the habit of locking up a dispenser prior to leaving a dispensing station.

If Appellant intends to mean that the Kraslavsky patent is non-analogous art, it has been held that a prior art reference must either be in the field of Appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the Appellant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, although Kraslavsky is not in the medical field, it is clearly pertinent to the problem of managing print results and making printers truly intelligent responsive members of the network capable of re-routing print requests when one printer is "off-line" and/or "out-of-paper" (Kraslavsky; col. 1, lines 45-55). As such, it is respectfully submitted that Kraslavsky is clearly analogous art.

Response to Argument (B):

In response to the second argument, the Examiner respectfully submits that Appellant apparently misinterprets the motivations relied upon by the Examiner for the combination of the applied prior art. In particular, the statement "thereby enabling printed patient's prescription information to be given out in a timely and efficient manner" was not the motivation, *per se*, but rather a by-product of the proposed combination. In particular, the motivation relied upon by the Examiner was that of "enabling remote printers to be effective and intelligent members of a network" (see Paper Number 11; page 4, lines 19-22 & page 10, lines 1-3 of the 1/17/02 rejection) which is taken directly and solely from the Kraslavsky reference (Kraslavsky; col. 1, lines 45-55). Aside from this passage, there was no other motivation provided by the Examiner. As such, Appellant's citations of col. 12, lines 5-16 and "col. 12, lines 16-13" of Kraslavsky, are passages that were never relied upon by the Examiner for motivation, and are thus irrelevant to the issues at hand. In light of the above, the Examiner respectfully submits that Appellant's reliance on the *In re Sang Su Lee* and *W.L. Gore v. Garlock* decisions are moot, as the Examiner's motivation is based solely on the applied art of record and not on Appellant's teachings and/or mere speculation.

In addition, it is not clear why Appellant does not consider "enabling remote printers to be effective and intelligent members of a network" to be sound scientific reasoning. As noted previously, Halvorson's Fig. 1 clearly depicts a plurality of printers (21) connected to dispensing station (with or without a dispenser) (32) via a computer (10). The only modification proposed by the Examiner was that of incorporating Novell NetWare(R) software disclosed by Kraslavsky (col. 12, lines 6-13) with the intention of better managing the multiple printers of Halvorson by

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making them truly intelligent responsive members of the network capable of re-routing print requests when one printer is "off-line" and/or "out-of-paper" (Kraslavsky; col. 1, lines 45-55). Does Appellant take the position that instructing the re-routing of print-outs from a first printer to a second printer when the first printer is "off-line" and/or "out-of-paper" is neither timely nor efficient? As such, it is not clear as to why Appellant views the managing of multiple printers within a network via specialized software to be devoid of sound scientific reasoning. Nor is it clear why Appellant believes that the combination of the applied prior art is based on mere speculation of the Examiner when the rejections are clearly based on nothing more than the teachings of the applied prior art. In light of the above, the Examiner respectfully submits that each and every feature of the claims have been detailed in the teachings of Halvorson and Kraslavsky, and the motivation for their combination have been expressly taken from the references themselves. Thus, with regard to Appellant's arguments, the Examiner respectfully submits that Appellant fails to consider the clear and unmistakable teachings of the applied references in the manner presented by the Examiner.

In addition, the Examiner also recognizes that references cannot be arbitrarily altered or modified and that there must be some reason why one skilled in the art would be motivated to make the proposed modifications. However, although the Examiner agrees that the motivation or suggestion to make modifications must be articulated, it is respectfully contended that there is no requirement that the motivation to make modifications must be expressly articulated within the references themselves. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures, *In re Bozek*, 163 USPQ 545 (CCPA 1969).

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As such, it is respectfully submitted that an explanation based on logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner in the prior Office Action (paper number 11), *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter., 4/22/93).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Robert Morgan
Assistant Patent Examiner
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RWM
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March 22, 2003

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